

NO. 18,713 ✓

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOSEPH C. SAN NICOLAS,
Appellant,

vs.

GOVERNMENT OF GUAM,
Appellee.

OPENING BRIEF OF APPELLANT

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FILED

JUL 31 1963

FRANK H. SCHMID, CLERK

THE UNITED STATES OF AMERICA
IN SENATE
COMMITTEE ON THE JUDICIARY
Hearings on the nomination of
[Name] to the office of
[Title]

NAME OF NOMINEE	[Name]
RESIDENCE	[Address]
EDUCATION	[Education]
PROFESSION	[Profession]
OTHER INFORMATION	[Other Information]

TESTIMONY OF [Name]
[Text of testimony]

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CLARK H. SCOTT

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Codes

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Texts

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JOSEPH C. SAN NICOLAS,
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vs.

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Appellee.

OPENING BRIEF OF APPELLANT

JURISDICTION

The jurisdiction of the appellate division of the District Court of Guam over this criminal proceeding is sustained by 48 U.S.C. Section 1424 (a) (1958 ed.) and Guam Code Civ. Proc. (1953), Section 63. The juris-

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diction of this court to review the judgment of the appellate division of the District Court of Guam appealed from is sustained by 28 U.S.C. Section 1291 (1958 ed.) and 28 U.S.C. Section 1294(4) (Supp. III, 1958 ed.).

THE CASE

On March 1, 1963, appellee filed an amended information stating that appellant,

"... on or about the 8th day of October, 1962, in the territory of Guam, at Agana Heights, ... did unlawfully and feloniously enter the Seventh Day Adventist, Far Eastern Island Mission Building with intent to commit theft, in violation of Section 459 to 461(2)

of the Penal Code of Guam."

"... on or about the 8th day of October, 1962, in the territory of Guam, at Agana Heights, ... did unlawfully and feloniously steal, take and carry away the personal property of another, to wit: \$70.00, United States Currency, the property of the Seventh Day Adventist, Far Eastern Island Mission, and did then and there appropriate the same to their own use and benefit, in violation of Section 484, in relation to Section 487(1) and punished under Section 489, all of the Penal Code of Guam."

The appellant, Joseph C. San Nicolas, was apprehended by the

Guam Police Department on October 9, 1962 at about 11:55 P.M. with five (5) other persons. The said incident supposedly took place on the 8th day of October, 1962. The appellant was questioned by Police Officers from the time of his arrest until 3:55 A.M. on the 10th day of October, 1962; at which time, a Police Officer typed a written confession which the appellant signed. The confession was in stilted police language excepting for the last two sentences. The confession stated that appellant entered the Seventh Day Adventist, Far Eastern Island Mission, on the 9th day of October, 1962 after the crime had been reported for more

than 24 hours. The appellant later categorically denied this admission and confession for it was taken in the early hours of the morning after continuous questioning of the appellant who is a youth, age 18 years and 4 months. The appellant established by independent testimony, an alibi for the 8th day of October, 1962, and through the night until the 9th day of October, 1962. Further, there was no evidence by the prosecution that the appellant was seen in the vicinity of the crime before or during the day prior to its commission.

The Prosecutor's evidence did not establish that there was any money

within the Mission except by hearsay evidence of its first two witnesses who also stated that they did not see the appellant or had ever seen him at the Mission. The only corroboration of the confession by the appellant who later repudiated under oath on the witness stand that he had never been near the Seventh Day Adventist, Far Eastern Island Mission Building, was the testimony of an accomplice, Gelo Tenorio, which under the law of Guam is inadmissible.

The testimony of the Police Officer in charge, Lt. Taitano, stated there was no fruits of the crime and that there was no evidence of any money or silver, or anything to indicate ...

that a crime actually occurred and that no money was found in the possession of the appellant. (R., p. 97, line 11 to 16)

Nevertheless, appellant was found guilty, and judgment was entered against him on April 22, 1963.

ERRORS RELIED UPON

The following are the errors which appellant relies:

1. The verdict was contrary to the weight of the admissible evidence. (Section 187(A) (Argument 1931 1937 24 Cal. App. 2nd 253 71 Cal. App. 2128)

It is establish principal of the law that a conviction cannot stand

if the prosecution introduce no evidence to support it. (Thompson v Louisville (1960) 362 US 199 4 L ed. 2nd 654 80Sct. 624 8ALR 2nd 1355) In this particular case it was held "... was not sufficiency of the evidence, but instead whether appellant's conviction rested on any evidence at all.

In the instant case there is evidence of the prosecution that was introduce to show that a crime was committed, but there was no evidence of any connection of the appellant with the alleged crime.

In Maulden v State (1937) 28Ala. App. 30, 177 SO 309), "this was established that in order to con-

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vict of a crime, it is necessary that the State establish by evidence. Without evidence there can be no conviction," all of the offense charged, and that the law permits nothing by legal evidence presented before the jury to be considered in support of the charged against the accused.

(United States v Schneiderman
(1952) DC Cal. 106 F. Supp. 986)

The confession was admitted even though it was of questionable value and unsupported.

Presumption of innocence which runs in favor of one accused of crime is one of the most familiar presumption known to the law.

"The presumption must be overcome by evidence. ... (Ft. 20 Holman v State (1952) 36 Ala. App. 474, 59 SO 2nd 620)

There is no connection of a crime when there is no evidence that a crime was committed, much less that the accused committed it or there were any fruits of the crime recovered by police. (R., p. 97, line 11 to 16)

The jury found the appellant not guilty of the offense of Grand Theft, but found the appellant, Joseph C. San Nicolas, guilty of the offense of Burglary in the Second Degree as charged in the first charge of the amended

"The first thing I noticed when I
 stepped out of the car was the
 smell of the city. It was a mix of
 old and new, of history and
 progress. The air was thick with
 the scent of the past, but also
 with the promise of the future.
 I had heard that the city was
 beautiful, but I didn't know
 it was so full of life. The streets
 were alive with the sound of
 the city, and the people were
 everywhere. It was a place
 where the old and the new
 met, and where the future
 was being born. I had found
 a place where I could belong.
 I had found a place where I
 could be myself. I had found
 a place where I could live.
 I had found a place where I
 could be happy. I had found
 a place where I could be
 free. I had found a place
 where I could be me."

The first thing I noticed when I

Information. It logically follows that if the appellant establish an alibi that he was not at the scene of the crime then the jury's verdict should be not guilty of any of the two charges.

2. No proper foundation was laid for the admission of the confession. (R., p. 91, line 20)

The confession was extorted by duress and was written on a typewriter by a Police Officer at 3:55 A.M. after continuous questioning by other Police Officers. The appellant is a youth, age 18 years and 4 months, who was scared, hungry and only partly awake. (R., p. 79, line 24 to 28)

3. This appellant was convicted upon the uncorroborated testimony of

accomplices. (R., p. 63, line 16 to 20, R., p. 52, line 16 to 24)

Section 1111. Conviction on Testimony of Accomplice. Accomplice defined. A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given.

A conviction (Supp. R., p. 15 line 5 to 23) which says, "an accomplice is a person who is guilty of the same offense as the offense charged against the appellant. Now in this jurisdiction as a matter of law, he is an accomplice. In this jurisdiction, appellant may not be convicted on the uncorroborated testi-

mony of an accomplice. There was no other corroborating evidence that the appellant was at the scene of the crime either by the police or the prosecutor's first two witnesses, Lois Foster and Jane C. Flores.

(20 Am. Jur. Evidence Section 222)

The accused may stand on this presumption of innocence withholding all proofs until the appellee establish his complete case. (Ft. 11)

(Holt v United States, 218 US 245

54 L ed. 1021, 31 S Ct. 2) Presumption of innocence attends all proceedings against the accused from their initiation until they resolve in a verdict which either finds him guilty or converts the presumption of innocence into an adjudged fact. (Ft. 12) In addi-

tion, the court should have found that the witness, Jesus P. Perez, was also an accomplice as a matter of law. (R., p. 20, line 19)

4. There was no corroboration of the confession.

The appellant categorically denied being at the scene of the crime. There was no evidence that the appellant was at the scene of the crime or that he took any money from the Seventh Day Adventist, Far Eastern Island Mission. Further, the appellant denied ever being at the Seventh Day Adventist, Far Eastern Island Mission Building. (R., p. 126, line 16 to 26)

5. The jury during its deliberations had access to law books and

statutes. The jury was sent to the Law Library of the Guam Congress Building and had access to law books. Further, the jury could have been influenced by the unauthorized use of the said law books.

6. The District Court of Guam erred in not granting a dismissal at the close of the Government Case.

(R., p. 98, line 23 to 26 Guam Code Section 1096) Presumption of innocence. Reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything

relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which after the entire comparison and consideration of all the evidence, leaves the mind of the Judge in that condition that he cannot say he feels an abiding conviction, to a moral certainty, of the truth of the charge."

There is a strong presumption of innocence and it is the burden of proof by the prosecution to prove beyond a reasonable doubt the charge which the appellant have been accused or it is the duty of the Judge to acquit the appellant. The remaining evidence tends to connect is not sufficient to connect the appellant with the crime as charged. Therefore, it was the



duty of the Judge to acquit the appellant, at the close of the Government Case. (Thompson v Louisville (1960) 362 US 199 4 L ed. 2nd 654 808 S.Ct. 624 8ALR 2nd 1355)

The presumption of innocence which runs in favor of the accused of crime in the instant case should have let the court to have directed a verdict of not guilty.

7. The District Court of Guam erred in admitting hearsay evidence, improper questioning, evidence without proper foundation.

The District Court of Guam failed to properly instruct the jury with respect to the proper

corroboration of the testimony of accomplices, and the proper proof and foundation for the admission of a confession.

Evidence without proper foundation, the screwdriver and the crowbar were shown by the police to have been found on the lawn of the Seventh Day Adventist, Far Eastern Island Mission. The police were unable to show that there was any direct connection of the crowbar or the screwdriver with the burglary of the Seventh Day Adventist, Far Eastern Island Mission Building, (R., p. 16, line 12 to 18) except by evidence of accomplices. If they

had been actually used by any person it would have been reasonable that the marks on the safe could match with the metal of the crowbar or the screwdriver. (R., p. 18, line 23 to 26)

There was no such showing or attempt to show that the same crowbar and screwdriver actually were involved with this crime, other than the introduction by the prosecutor.

The court should have instructed the jury that there were two accomplices and that a conviction could not be had upon the testimonies of accomplices. There was no proper foundation by the prosecution for the confession of

the appellant, Joseph C. San
Nicolas.

Section 1118. When evidence on prosecution side is closed, the court may acquit. If, at any time after the evidence on the prosecution side is closed, the court deems it insufficient to warrant a conviction, it may acquit the defendant.

Section 1111. (1953 Penal Code of Guam) Conviction on testimony of accomplice. A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. ...

The court should not have permitted the evidence of the accomplices to be put into the record. Later it attempted to issue instructions, in effect the accomplices' testimonies could



not be considered; but the jury disregarded the Judge's instructions and did convict the appellant.

The confession was entered without proper foundation as the prosecutor never layed such before requesting admission of the confession. The police said the crowbar was not identified as to the owner, (R., p. 16, line 12 to 18) and did not see appellant using crowbar. There were no marks on the safe which could (R., p. 18, line 23 to 26) be identified as same width of crowbar tip.

8. The District Court of Guam failed to properly instruct the jury with respect to the

proper corroboration of the testimony of accomplices and the proper proof and foundation for the admission of a confession.

Jesus P. Perez, one of the prosecutor's witness, was the driver of the car and owner of the screwdriver and crowbar. He was arrested, but was never brought to trial. ... one who is an accomplice means one who is liable to prosecution for the identical offense charged against the defendant. ...

ARGUMENT

1. First Point of Law, the verdict was contrary to the weight of the admissable evi-

The first of these is the
 fact that the system is
 designed to be self-
 adjusting. The system
 will automatically
 adjust itself to the
 changing conditions of
 the environment. This
 is done by the use of
 a feedback loop. The
 system will measure
 the output and compare
 it with the desired
 output. If there is a
 difference, the system
 will adjust itself to
 bring the output back
 to the desired level.

The second of these is
 the fact that the system
 is designed to be
 self-organizing. The
 system will automatically
 organize itself into a
 structure that is
 optimal for the
 given conditions. This
 is done by the use of
 a self-organizing
 algorithm. The system
 will start with a
 random structure and
 gradually refine it
 until it reaches an
 optimal state.

dence.

... it is the duty of the prosecution to prove all the elements of the crime beyond a reasonable doubt...

(Page 98 Guam Code Section 1096) Presumption of innocence. Reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. ...

Here the prosecution failed to prove their case beyond a reasonable doubt. ..., the prosecution did attempt to show a crime was committed by pictures, exhibits 1 and 2. This is not sufficient to prove 'beyond a reasonable

doubt', which was their burden. The prosecution, then proceeded to enter exhibits 3 and 4, the crowbar and the screwdriver, but failed to connect them with the appellant except through the testimony of Jesus Perez, the owner of the tools, who stated that he was told by Galo Tenorio, (another accomplice), three days before the trial that the appellant had put the crowbar and the screwdriver in his car. (R., p. 32, line 17 to 24)

This was hearsay of the evidence of an accomplice, Galo Tenorio, (R., p. 48, line 25 to 26, R., p. 49, line 2 and 3). As to the

prosecution's exhibit No. 5, there was little doubt that this confession was a stereotyped printed form by the police with an insertion of some of the words used by the appellant. This confession was false as it confessed to entering the Mission on October 9, 1962. (R., p. 91, line 20) Clearly, this was a fatal error to the entire confession, for he was in custody of the police at this time. The court gave a proper instruction that ... they should scrutinize the surrounding circumstances. ... The appellant signed this at 3:55



A.M., but later repudiated to the confession in its entirety and established that he was in Dededo Village, approximately 10 miles from the alleged scene of the crime. The prosecution failed to show any connection by the first two witnesses with the appellant or that he was ever present on the grounds or in the building of the Seventh Day Adventist Mission.

The confession was partly false as it did not confess to a crime on the date alleged by the prosecution.

"... Confession is an admission by a defendant of all facts constituting the crime

charged. The very nature of a confession requires the circumstances surrounding it be subject to careful scrutiny... (or) that "for some threat of harm or some offer of promise of unscrutiny... such confession should not be considered". ...

Here the prosecution failed to connect the appellant with the crime and then attempted to use the evidence of the accomplice to corroborate the very same testimony that the accomplice had given, this violates the intent of the legislature in enacting Section 1111 in that such

corroboration must be by "some other evidence as shall tend to connect the defendant with the commission of the offense". ...

This element of the alleged crime must, of course, be proven beyond a reasonable doubt.

"... The prosecution is required to prove beyond a reasonable doubt--that is, to a moral certainty--every fact or element of the crime charged, each independent fact necessary to the chain of circumstances to show... the guilt of the accused. ..."

(18 Cal. Jur. 2d, Evidence

Section 112 (emphasis added)
(Footnotes omitted).

"

"No adjudication by the court of the status of the only evidence offered by the prosecutor upon the trial tending to prove burglary in the second degree was the confession by the appellant which was typed by a Police Officer and signed by the appellant after continuous questioning by Police Officers. And as that confession was not based upon proof beyond a reasonable doubt, one of the elements of the crime alleged (The confession of Joseph C.

San Nicolas) was not proven beyond a reasonable doubt.

Therefore, the trial court

erred in denying appellant's

motion for entry of judgment

of acquittal and in entering

judgment against appellant.

Respectfully submitted,

PALTING & GROVER,

By G. WILBERT GROVER,

Attorneys for Appellant.

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CERTIFICATION

I certify that in connection with the preparation of this brief I

have examined Rules 18 and 19 of

the United States Court of Appeals

for the Ninth Circuit and that, in

my opinion, the foregoing brief is

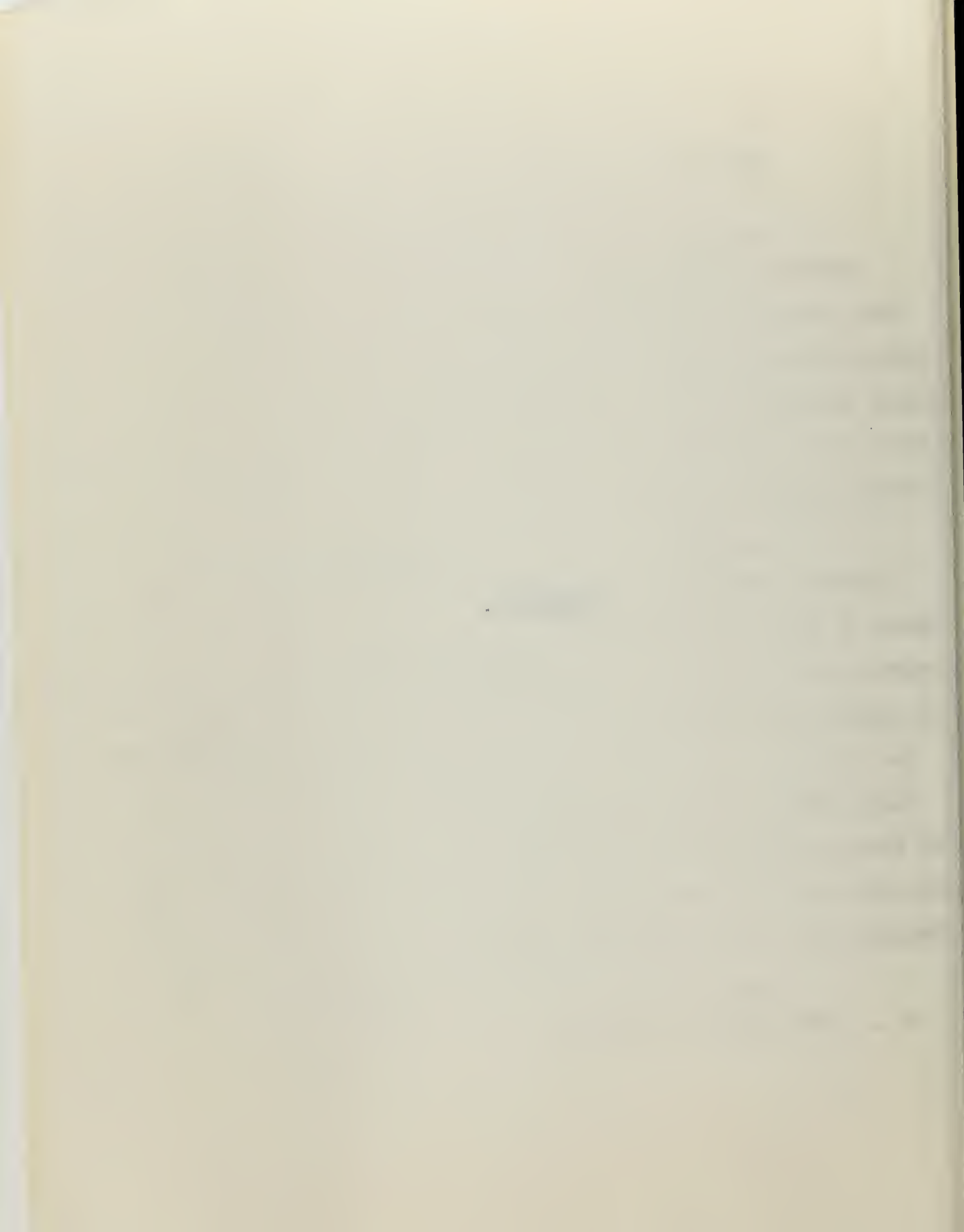
in full compliance with those rules.

G. WILBERT GROVER.

(Appendix Follows)

THE
JOURNAL OF THE
ROYAL ANTHROPOLOGICAL INSTITUTE
OF GREAT BRITAIN AND IRELAND
VOLUME 34
PART 1
1904
LONDON
PUBLISHED BY THE
Royal Society of Great Britain
21, BEDFORD SQUARE, W.C.1
1904

Appendix.



Appendix

STATUTE AND RULE CITED

"The courts of appeals shall have jurisdiction of appeals from all final decisions of . . . the District Court of Guam" 28 U.S.C. Section 1291 (1958 ed.).

" Appeals from reviewable decisions of the . . . territorial courts shall be taken to the courts of appeals as follows:

".

"(4) From the District Court of Guam, to the Court of Appeals for the Ninth Circuit." 28 U.S.C. Section 1294 (Supp. III, 1958 ed.).

". . . The District Court of

Guam . . . shall have such appellate jurisdiction as the legislature may determine" 48 U. S.C. Section 1424(a) (1958 ed.).

"When used in this title, unless the context otherwise requires:

"(a) 'Court' means District Court.

"(b) 'Judge' means judge of the District Court.

"(c) 'Confession' means an admission by a defendant of all facts constituting the crime charged.

"(d) 'Accomplice' means one who is liable to prosecution for the identical offense charged against the defendant. ...

"(e) The singular includes the plural, the plural the singular, and the masculine the feminine, when consistent with the intent of this act." Guam Code Civ. Proc. (1962 Cum. Pocket Supp.), Section 251.

"Motion for judgment of Acquittal.

The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's

The first part of the book is devoted to a general introduction to the subject of the history of the English language. It deals with the various stages of the language from its earliest forms to the present day. The second part of the book is devoted to a detailed study of the English language in its various dialects and varieties. It deals with the differences in pronunciation, grammar, and vocabulary between the different varieties of the language. The third part of the book is devoted to a study of the English language in its various social contexts. It deals with the differences in language use between different social classes and groups. The fourth part of the book is devoted to a study of the English language in its various historical contexts. It deals with the changes in the language over time and the influence of other languages on the English language.

The book is written in a clear and concise style, and it is suitable for students of the English language. It is a valuable resource for anyone who is interested in the history and development of the English language. The book is divided into four main parts, each of which deals with a different aspect of the English language. The first part is an introduction to the subject, the second part is a study of the various dialects and varieties of the language, the third part is a study of the English language in its social contexts, and the fourth part is a study of the English language in its historical contexts. The book is written in a clear and concise style, and it is suitable for students of the English language. It is a valuable resource for anyone who is interested in the history and development of the English language.

motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.

EXHIBITS

- Appellee's 1 (Photograph)
 (office).....(R., p. 4)
- Appellee's 2 (Photograph)
 (safe).....(R., p. 4)
- Appellee's 3 (Crowbar)...(R., p. 14)
- Appellee's 4 (Screw-
 driver).....(R., p. 14)
- Appellee's 5 (Statement,
 San Nicolas).....(R., p. 79)

